

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

#### IX. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal

governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Approval of Ohio's emissions inventories does not impose any new requirements on small entities.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 1995.

Valdas V. Adamkus,  
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (v) to read as follows:

##### § 52.1885 Control Strategy: Ozone.

\* \* \* \* \*

(v) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for the Canton (Stark County); Cincinnati-Hamilton (Butler,

Clermont, Hamilton and Warren Counties); Cleveland-Akron-Lorain (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown-Warren-Sharon (Mahoning and Trumbull Counties) areas.

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#### 40 CFR Parts 52 and 81

[Region II Docket No. 146, NJ23-1-7243(a); FRL-5322-2]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 9, 1995, the New Jersey Department of Environmental Protection (NJDEP) submitted requests to redesignate the Camden County nonattainment area and nine not-classified areas from nonattainment to attainment for carbon monoxide (CO). Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the New Jersey requests because they meet the redesignation requirements set forth in the CAA, which include the submittal of maintenance plans.

In addition, EPA is approving two related State Implementation Plan (SIP) submissions by NJDEP. On November 15, 1992, NJDEP submitted a final 1990 base year emission inventory for CO emissions. This includes emissions data for the entire State for all sources of CO in New Jersey's CO nonattainment areas. NJDEP also submitted contingency measures in the event the State fails to maintain the national ambient air quality standards for CO or if its vehicle miles travelled forecast is exceeded. In this action, EPA is approving New Jersey's CO emissions inventory submission and contingency measures.

EFFECTIVE DATES: This final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: William S. Baker, Chief, Air Programs Branch,

Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007-1866

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:**

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866, (212)637-4249.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Camden County was designated nonattainment for CO under the provisions of sections 186 and 187 of the CAA. Because the area had a design value of 11.6 parts per million based on 1988 and 1989 data, the area was classified moderate. [See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, section 81.331.] This design value was based on ambient CO data recorded in the City of Philadelphia, which is in the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (CMSA). For moderate CO nonattainment areas, the CAA requires that air quality must attain the National Ambient Air Quality Standard (NAAQS) by December 31, 1995. The last exceedance of the CO NAAQS in Camden County occurred in 1989.

In addition, nine areas were designated as not-classified nonattainment under section 107(d)(1)(C) of the CAA. Three of these not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton CMSA. Five of the not-classified areas, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville, are located in the New York-Northern New Jersey-Long Island (NY-NJ-LI) CMSA. The remaining not-classified area is the City of Atlantic City, which is not contained within a CMSA. The oxygenated gasoline requirements applicable to each of these areas depend upon its location in the State. These requirements are discussed in section III.5 of this notice.

The nine areas were considered "not-classified" because air quality data collected during the period 1988 and 1989 showed that the NAAQS were met or because the data were not available. In those instances where air quality was no longer being monitored, concentrations measured in prior years had fallen well below the CO NAAQS.

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on September 28, 1995, the State of New Jersey submitted CO redesignation requests and maintenance plans for Camden County and the nine not-classified areas. This submittal contained evidence that public hearings were held on September 8, 1995.

**II. Evaluation Criteria**

Section 107(d)(3)(E) of the CAA provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k) of the CAA.
3. The air quality improvement must be permanent and enforceable.
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

**III. Review of State Submittal**

EPA has determined that the information received from the NJDEP constitutes complete redesignation requests under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

Additionally, the New Jersey redesignation requests for Camden County and the nine not-classified areas meet the five requirements of section 107(d)(3)(E), noted earlier. The following is a brief description of how the State has fulfilled each of these requirements.

**1. Attainment of the CO NAAQS**

New Jersey has quality-assured CO ambient air monitoring data showing that Camden County and the nine not-classified areas have met the CO NAAQS. These requests are based on an analysis of quality-assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years.

CO monitoring data from calendar year 1990 through calendar year 1994 shows that no violations of the CO NAAQS have occurred. Camden County and the nine not-classified areas have complete quality assured data showing no more than one exceedance of the NAAQS per year over the most recent two complete years of data (1993 and 1994). In fact, the nine not-classified areas have not violated the NAAQS since 1987. In addition, the most recent ambient CO data for calendar year 1995 shows no exceedances of the NAAQS to date in Camden County or in the nine not-classified areas. EPA finds that all of these areas have met the first statutory criterion for attainment of the CO NAAQS (40 CFR 50.9 and appendix C).

Furthermore, air quality data for the Philadelphia portion of the Philadelphia-Wilmington-Trenton CMSA shows that the remainder of the nonattainment area has met the CO NAAQS since 1990. Therefore, air quality in the entire CMSA has been meeting the CO standards since 1990.

**2. Fully Approved SIP Under Section 110(k) of the CAA**

New Jersey's September 28, 1995 CO SIP revision is fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the CAA, including the requirements of Part D (relating to nonattainment), which were due prior to the date of New Jersey's redesignation request. The 1990 CAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for Camden County and the nine not-classified areas include the preparation of a 1990 emission inventory with periodic updates and the development of contingency measures. Each of these requirements added by the 1990 CAA are discussed in greater detail below.

**A. Part D New Source Review Requirements**

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring full approval of a Part D NSR program by New Jersey as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. New Jersey has not relied on a NSR program for CO sources to maintain attainment. Because Camden

County and nine not-classified areas are being redesignated to attainment by this action, New Jersey's Prevention of Significant Deterioration requirements will be applicable to new or modified sources in Camden County and the nine not-classified areas.

#### B. Emission Inventory

New Jersey submitted a CO base year inventory for the entire State to EPA on November 15, 1992. On November 21, 1994, New Jersey submitted a technical update to the CO emission inventory for Bergen, Essex, Hudson, Passaic, and Union Counties. On September 28, 1995, New Jersey updated the CO emission inventory for the Camden County moderate nonattainment area and nine not classified nonattainment areas. These inventories are required under section 187(a)(1) of the CAA.

New Jersey's base year inventory used a three month CO season of November 1990 through February 1991. The inventory included emissions estimates from stationary point, stationary area, on-road mobile, and nonroad mobile sources of CO. These emission estimates were prepared in accordance with EPA guidance.

Table A presents a summary of the CO peak season daily emissions estimates in tons per winter day for Camden County and the nine not classified areas. Table B presents a summary of the CO peak season daily emissions estimates in tons per winter day for the remaining nonattainment areas in the State.

TABLE A.—SUMMARY OF CO PEAK SEASON DAILY EMISSIONS ESTIMATES

Nonattainment Area	1990 Base year CO emission inventory (tons per day)	2007 Projected CO emission inventory (tons per day)
City of Atlantic City ...	98	80
City of Burlington .....	225	200
Borough of Freehold .	245	205
City of Morristown .....	251	192
Borough of Penns Grove (part) .....	47	37
City of Perth Amboy .	320	279
Borough of Somerville .....	135	113
City of Toms River .....	145	142
City of Trenton .....	154	135
Total for Not Classified Areas .....	1620	1383
Camden County .....	252	218
Total for Camden County .....	252	218

TABLE B.—SUMMARY OF CO PEAK SEASON DAILY EMISSIONS ESTIMATES

Nonattainment area	1990 Base year CO emission inventory (tons per day)
Bergen County .....	506
Essex County .....	377
Hudson County .....	222
Passaic County .....	303
Union County .....	273
Total for Northern Nonattainment Counties .....	1681

Section 110(k) of the CAA contains provisions regarding emission inventory submittals. The EPA has determined that New Jersey's 1990 base year CO emissions inventory submitted on November 15, 1992 and updated on November 21, 1994 and September 28, 1995, meets these requirements. For further details, the reader is referred to the Technical Support Document, which is available for review at the addresses provided previously.

#### C. Contingency Measures

Under section 187(a)(3) of the CAA, the State is required to include adopted contingency measures in the event the State fails to attain the national ambient air quality standards by the required date or if the vehicle miles travelled forecast is exceeded beyond the allowable limit as defined in the January, 1992 guidance document, "Section 187 VMT Forecasting and Tracking Guidance."

EPA is approving New Jersey's transportation control measures (TCMs) with these redesignation requests. These TCMs cover three major program areas: Traffic flow improvements, park & ride lots, and increased ridesharing. The State included its employee commute options (ECO) program as an additional contingency measure. EPA will be taking action on New Jersey's ECO program submittal as a requirement of the State's ozone SIP in a separate Federal Register notice since there are specific requirements an ECO program must meet in order to be approved as part of an ozone SIP, but not as a contingency measure in a CO SIP.

#### 3. Improvement in Air Quality Due to Permanent and Enforceable Measures

New Jersey has implemented a number of measures to control motor vehicle CO emissions. Emission reductions achieved through the implementation of these control measures are enforceable. These

measures include the Federal Motor Vehicle Control Program, Federal reformulated gasoline, New Jersey's pre-1990 modifications to its inspection and maintenance (I/M) program, and local transportation control measures.

The State of New Jersey has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed Camden County to attain the NAAQS since 1990 and the nine not-classified areas to attain since 1986.

#### 4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of New Jersey's maintenance plans for Camden County and the nine not-classified areas because EPA finds that New Jersey's submittal meets the requirements of section 175A.

#### A. Attainment Emission Inventory

As previously noted, on November 15, 1992, the State of New Jersey submitted a comprehensive inventory of CO emissions for Camden County and the nine not-classified areas. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations. Although the 1990 inventory can be considered representative of attainment conditions because the NAAQS were not violated during 1990, New Jersey established CO emissions for the redesignation year, 1995, as well as a forecast for the year 2007 in its redesignation request. These estimates were derived from the State's 1990 emissions inventory and assumptions

about economic and vehicle miles travelled growth.

#### B. Demonstration of Maintenance-Projected Inventories

Total CO emissions were projected from 1990 base year out to 2007. These projected inventories were prepared in accordance with EPA guidance. The projections in Table A show that future CO emissions are not expected to exceed the level of emissions in the base year after the benefits of the Federal Motor Vehicle Control Program, reformulated gasoline and pre-1990 basic I/M program are taken into consideration. It should be noted that the NJDEP demonstrated that Camden County and the nine not-classified areas will maintain the CO standard without the need for an oxygenated fuels program.

As a result of this projection, New Jersey took into account the effects of growth due to economic activities and population on stationary and off-highway sources.

#### C. Monitoring Network

New Jersey has committed to continue to operate its existing air monitoring network and quality assurance program in accordance with 40 CFR part 58 to ensure the development of complete and accurate emission inventory and air monitoring data.

#### D. Verification of Continued Attainment

Continued attainment of the CO NAAQS in Camden County and the nine not-classified areas depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submit periodic inventories of CO emissions every three years beginning in 1996 and continuing at least through 2007.

#### E. Contingency Plan

The level of CO emissions in Camden County and the nine not-classified areas will largely determine their ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS based upon some unforeseeable condition. In order to meet this challenge, the CAA requires states to develop contingency measures to offset these conditions.

New Jersey will be using an enhanced I/M program as its contingency measure. New Jersey is implementing enhanced I/M to meet other requirements of the CAA and it has the additional benefit of reducing CO emissions. However, New

Jersey will not wait for a triggering mechanism before implementing this measure. Instead, the State will implement this program as quickly as is practicable. Operation of this program is expected to begin in 1996.

#### 5. Meeting Applicable Requirements of Section 110 and Part D

In section III.2. of this notice EPA sets forth the basis for its conclusion that New Jersey has a fully approved SIP which meets the applicable requirements of section 110 and Part D of the CAA. EPA notes that section 110 also requires that states include in their SIPs, where applicable, oxygenated gasoline programs. EPA has concluded that Camden County is no longer required to have an oxygenated gasoline program in the applicable SIP because the entire Philadelphia-Wilmington-Trenton CMSA is in fact attaining the CO NAAQS. In addition, for redesignation purposes, an oxygenated gasoline program does not have to be a part of the applicable SIP for the nine not classified nonattainment areas.

#### Camden County

The Camden County low moderate nonattainment area had a CO design value greater than 9.5 parts per million at the time of the enactment of the Clean Air Act Amendments of 1990 and thus was originally required to have an oxygenated gasoline program by November 1, 1992 as a part of the SIP for this area. In this notice, however, EPA is finding that the entire Philadelphia-Camden nonattainment area is currently attaining the CO NAAQS (See section III.1). Under a new interpretation of section 211(m)(6) discussed in this section, once EPA determines that a CO nonattainment area is actually attaining the CO NAAQS and that the area demonstrates it does not need oxygenated gasoline to maintain the NAAQS, section 211(m) no longer requires the submittal of a SIP revision for the area embodying an oxygenated gasoline program so long as the area continues to maintain the standard. Thus, because EPA finds that the Philadelphia-Camden nonattainment area is actually attaining the NAAQS and that Camden County has demonstrated that it does not need oxygenated gasoline for maintenance, Camden County is no longer required to have an oxygenated gasoline program in the applicable SIP. As a consequence, Camden County may be redesignated notwithstanding the lack of a section 211(m) oxygenated gasoline program since such a program is not an applicable requirement for purposes of evaluating the redesignation request for

Camden County pursuant to section 107(d)(3)(E).

In this notice, EPA is refining its previous interpretation of when section 211(m) requires a state to include an oxygenated gasoline program in its SIP. Section 211(m)(1) requires states with nonattainment areas with a design value of at least 9.5 ppm to submit a SIP revision containing oxygenated gasoline requirements. Section 211(m)(6), however, states: "*Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment* for CO, except that in a CO area which is redesignated as attainment for CO, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard \* \* \*" (emphasis added).

Previously, EPA has looked to an area's designation as nonattainment to determine whether oxygenated gasoline is required. However, section 211(m)(6) refers specifically to an area "which is in attainment," not to one which is designated attainment. EPA interprets this language to mean that as soon as EPA determines that an entire nonattainment area is actually in attainment, even prior to redesignation, section 211(m) no longer requires an oxygenated gasoline program for that area.

This interpretation is based on the plain language of the statute and is supported by the general CAA structure for applying provisions for SIP requirements to nonattainment areas. Section 211(m)(6) provides that nothing in section 211(m) is to be interpreted as requiring an oxygenated gasoline program in an area that is "in attainment;" it does not state that nothing in section 211(m) is to be interpreted as requiring an oxygenated gasoline program in an area "designated attainment." The two issues are distinct, however. Whether an area is "in attainment" depends solely on a determination of whether an area is attaining the NAAQS (a determination based on the air quality of the area), whereas an area's designation as attainment or nonattainment depends on other factors as well as its own air quality. [See section 107(d)(1) and (d)(3)(E).] Congress has drawn distinctions between the issue of whether an area has attained the standard and its designation as attainment. [See, e.g., section 107(d)(3)(E) (attainment of the standard is one of several criteria for being redesignated attainment); section 182(f) (NO<sub>x</sub> RACT requirements may be waived for nonattainment areas if it is

determined that NO<sub>x</sub> reductions would not contribute to attainment of the standard.)]

Moreover, this interpretation is a reasonable reading that gives section 211(m)(6) legal effect. Section 175A states that nonattainment area requirements continue in force and effect until an area is redesignated to attainment; by implication, once the area is redesignated, the requirements no longer apply except as needed for maintenance or as contingency measures. Section 211(m)(6) would be a redundant restatement of this principle if it meant only that redesignated areas were no longer subject to oxygenated gasoline requirements. Furthermore, EPA notes that provisions such as section 211(m)(6) are not reflected in other nonattainment area provisions, such as the inspection/maintenance requirements, further supporting EPA's interpretation.

The effects of this interpretation of section 211(m) are limited in several respects. Where a state that is in fact attaining the CO NAAQS has an oxygenated gasoline program as part of an approved SIP, the program would remain in the SIP; section 211(m)(6) only would allow the state to submit a SIP revision to remove the program, and then only if it is not needed for maintenance and its removal complied with section 110(l). Also, the entire nonattainment area must be actually achieving the CO NAAQS before oxygenated gasoline would not be required for any portion of the MSA or CMSA in which an area is located. Furthermore, unless the area is redesignated to attainment, the oxygenated gasoline program requirement would again become effective upon a subsequent violation of the standard. In addition, as this interpretation is based on the language of section 211(m)(6), it does not extend beyond the oxygenated gasoline requirements to other CAA SIP requirements.

#### *The Nine Not Classified Areas*

For various reasons, none of the nine not-classified nonattainment areas being redesignated to attainment in today's notice are required to have an oxygenated gasoline program in their approved SIP in order to be redesignated. None of the areas had a CO design value of 9.5 parts per million or greater and, therefore, none of the nine areas would have been required to have an oxygenated gasoline program. However, oxygenated gasoline programs had been required in eight of these nine areas because they are located in a CMSA containing a moderate CO

nonattainment area in which section 211(m) required a program. The ninth area, Atlantic City, was and is not required to have an oxygenated fuel program in its SIP nor is it a part of a CMSA where the program is required.

Three of the not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton CMSA. While these areas had once been required to have an oxygenated gasoline program due to their location in the same CMSA as the Camden Area, as the Camden Area is no longer required to have a program, they are also no longer required to have a program.

EPA is proceeding with the redesignation of the remaining five not-classified nonattainment areas in the NY-NJ-LI CMSA notwithstanding the lack of an approved SIP requiring the sale of oxygenated fuels in these five areas. These areas are, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville. EPA believes that these five areas satisfy the requirement of section 107(d)(3)(E) of the CAA in that they have a fully-approved SIP meeting all of the section 110 and Part D requirements applicable to the area. The reasons for this view are based on a combination of factors.

The requirements of section 211(m) concerning the sale of oxygenated gasoline in the NY-NJ-LI CMSA do not apply to the five not-classified areas by virtue of their own classification, designation or design value. Rather, oxygenated fuel is required to be sold in these areas because they are located within a CMSA containing a moderate CO nonattainment area with a design value of greater than 9.5 parts per million.

The requirements concerning the sale of oxygenated fuels in areas that are located within a CMSA in which a CO nonattainment area with a design value of 9.5 parts per million or greater exist regardless of the designation or classification of those areas as attainment, nonattainment or not-classified. Thus, the applicability of the requirements concerning the sale of oxygenated fuels in the five not-classified areas will not be affected by the redesignation of those areas to attainment. Furthermore, the State of New Jersey remains subject to a requirement to submit a SIP revision requiring the sale of oxygenated fuel in the New Jersey portion of the NY-NJ-LI CMSA because nonattaining areas of the CMSA remain subject to the section 211(m) requirements.

For purposes of applying the provisions of section 107(d)(3)(E) concerning requirements applicable to an area seeking redesignation, EPA believes it reasonable and appropriate to view the oxygenated fuel requirements of section 211(m) as applying only to an area within a CMSA whose design value triggered the applicability of the program, but not to the peripheral areas within the same CMSA that are subjected to the program by virtue of their location within that CMSA. Nonetheless, the redesignation to attainment of the five not-classified areas located in the NY-NJ-LI CMSA will not remove the mandate that the State is required to submit a SIP revision to implement an oxygenated fuel program throughout the CMSA.

#### IV. Final Action

EPA is approving the Camden County and nine not-classified CO maintenance plans because they meet the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the requests for redesignating Camden County and the nine not-classified areas to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving New Jersey's 1990 base year CO emissions inventory and contingency measures.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective February 5, 1996 unless, by January 8, 1996, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no

adverse comments are received, the public is advised that this rule will be effective in 60 days. [See 47 FR 27073 and 59 FR 24059.]

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. US EPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 187 of the CAA. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to

the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated annual costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant economic impact on a substantial number of small entities. [See 46 FR 8709.]

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

#### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

#### 40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: October 24, 1995.

William J. Muszynski,  
Deputy Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart FF—New Jersey

2. Section 52.1570 is amended by adding paragraph (c)(57) to read as follows:

#### § 52.1570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(57) The redesignation and maintenance plan for Camden County and the Nine not-classified areas (the City of Trenton, the City of Burlington, the Borough of Penns Grove (part), the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River, the Borough of Somerville, and the City of Atlantic City) submitted by the New Jersey Department of Environmental Protection on September 28, 1995, as part of the New Jersey SIP. The 1990 Baseline CO Emission Inventory for the State of New Jersey was submitted on November 15, 1992 and a Technical Update was submitted on November 21, 1994.

(i) Incorporation by reference.

(A) "New Jersey Carbon Monoxide State Implementation Plan Redesignation And Maintenance Plan For Camden County," section 5.f, effective date September 28, 1995.

(B) "New Jersey Carbon Monoxide State Implementation Plan Redesignation and Maintenance Plan for the Nine Not-Classified Nonattainment Areas," section 5.f, effective date September 28, 1995.

(ii) Additional material.

(A) "New Jersey Carbon Monoxide State Implementation Plan Redesignation And Maintenance Plan For Camden County" with appendices, September 28, 1995.

(B) "New Jersey Carbon Monoxide State Implementation Plan Redesignation and Maintenance Plan for the Nine Not-Classified Nonattainment Areas" with appendices, September 28, 1995.

3. Section 52.1582 is amended by redesignating paragraph (d) to (d)(1) and adding new paragraph (d)(2) to read as follows:

#### § 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

\* \* \* \* \*

(d) \* \* \*

(d)(2) The base year carbon monoxide emission inventory requirement of section 187(a)(1) of the 1990 Clean Air Act Amendments has been satisfied for the entire State. The inventory was submitted on November 15, 1992 and amended on September 28, 1995 by the New Jersey Department of Environmental Protection as a revision to the carbon monoxide State Implementation Plan.

**PART 81—[AMENDED]**

Authority: 42 U.S.C. 7401–7671q.

**§ 81.331 New Jersey.****Subpart C—Section 107 Attainment Status Designations**

2. In § 81.331, the table for “New Jersey-Carbon Monoxide” is amended by revising the entry for Camden County to read as follows:

1. The authority citation for part 81 continues to read as follows:

**NEW JERSEY—CARBON MONOXIDE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Atlantic City Area:				
Atlantic County (part) The City of Atlantic City .....	February 5, 1996	Attainment.	.....	
Burlington Area:				
Burlington County (part) City of Burlington .....	February 5, 1996	Attainment.	.....	
Freehold Area:				
Monmouth County (part) Borough of Freehold .....	February 5, 1996	Attainment.	.....	
Morristown Area:				
Morris County (part) City of Morristown .....	February 5, 1996	Attainment.	.....	
New York-N. New Jersey-Long Island Area:				
Bergen County .....		Nonattainment	.....	Moderate > 12.7ppm.
Essex County .....		Nonattainment	.....	Moderate > 12.7ppm.
Hudson County .....		Nonattainment	.....	Moderate > 12.7ppm.
Passaic County (part):				
City of Clifton .....		Nonattainment	.....	Moderate > 12.7ppm.
City of Patterson .....		Nonattainment	.....	Moderate > 12.7ppm.
City of Passaic .....		Nonattainment	.....	Moderate > 12.7ppm.
Union County .....		Nonattainment	.....	Moderate > 12.7ppm.
Penns Grove Area:				
Salem County (part) Borough of Penns Grove. Those portions within 100 yards of the intersections of U.S. Route 130 and County Roads 675 & 607.	February 5, 1996	Attainment.	.....	
Perth Amboy Area:				
Middlesex County (part) City of Perth Amboy .....	February 5, 1996	Attainment.	.....	
Philadelphia-Camden County Area:				
Camden County .....	February 5, 1996	Attainment.	.....	
Somerville Area:				
Somerset County (part) Borough of Somerville .....	February 5, 1996	Attainment.	.....	
Toms River Area:				
Ocean County (part) City of Toms River .....	February 5, 1996	Attainment.	.....	
Trenton Area:				
Mercer County (part) City of Trenton .....	February 5, 1996	Attainment.	.....	
AQCR 043 NJ NY Connecticut Interstate (Remainder of) .....		Unclassifiable/ Attainment..	.....	
Middlesex County (part) area outside of Perth Amboy.				
Monmouth County (part) area outside of Freehold.				
Morris County (part) area outside of Morristown.				
Passaic County (part) area outside Clifton, Patterson, and Passaic.				
Somerset County (part) area outside of Somerville.				
AQCR 045 Metro. Philadelphia Interstate (Remainder of) .....		Unclassifiable/ Attainment.	.....	
Burlington County (part) Area outside Burlington.				
Gloucester County.				
Mercer County (part) Area outside Trenton.				
Salem County (part) Area outside Penns Grove Area.				
AQCR 150 New Jersey Intrastate .....		Unclassifiable/ Attainment.	.....	
Atlantic County (part) Area outside Atlantic City.				
Cape May County.				
Cumberland County.				
Ocean County (part) Area outside Toms River.				
AQCR 151 NE PA—Upper Delaware Valley .....		Unclassifiable/ Attainment.	.....	
Hunterdon County.				
Sussex County.				

## NEW JERSEY—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Warren County.				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95-29818 Filed 12-6-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Parts 52 and 81

[FL63-1-7143a; FRL-5340-7]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida Change in National Policy Regarding Applicability of Conformity Requirements to Redesignation Requests

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On February 7, 1995, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a maintenance plan and a request to redesignate the Tampa area from marginal nonattainment to attainment for ozone (O<sub>3</sub>). The Tampa O<sub>3</sub> nonattainment area consists of Hillsborough and Pinellas Counties. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data are available to warrant such revisions and the CAA redesignation requirements are satisfied. In this action, EPA is approving Florida's request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is also approving the 1990 base year emission inventory for the Tampa area.

**DATES:** This action will be effective February 5, 1996, unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments on this action should be addressed to Joey LeVasseur, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Hillsborough County Environmental Protection Commission, 1410 North 21st Street, Tampa, Florida 33605.

Pinellas County Department of Environmental Management, Division of Air Quality, 300 S. Garden Avenue, Clearwater, Florida 34616.

**FOR FURTHER INFORMATION CONTACT:** Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 ext.4215. Reference file FL63-1-7143a.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the O<sub>3</sub> national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Tampa-St. Petersburg-Clearwater area (Tampa), comprised of Hillsborough and Pinellas Counties, was designated under section 107 of the 1977 Act as nonattainment with respect to the O<sub>3</sub> NAAQS on March 3, 1978. [43 FR 8964, 40 CFR 81.310] In accordance with section 110 of the 1977 Act, the State submitted a part D O<sub>3</sub> SIP on April 30, 1979, which was supplemented on August 27, 1979, and January 23, 1980, which EPA conditionally approved on March 18, 1980, and fully approved on May 14, 1981, as meeting the requirements of section 110 and part D of the 1977 Act.

On November 15, 1990, the CAA Amendments of 1990 were enacted (1990 Amendments). [Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q] The nonattainment

designation of Tampa was continued by operation of law pursuant to section 107(d)(1)(C)(i) of the 1990 Amendments. Furthermore, it was classified as marginal for O<sub>3</sub> according to section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.310).

Tampa more recently has ambient monitoring data that show no violations of the O<sub>3</sub> NAAQS, during the period 1990 through 1994. In addition, there have been no exceedances reported for the 1995 O<sub>3</sub> season. Therefore, in an effort to comply with the 1990 Amendments and to ensure continued attainment of the NAAQS, Florida submitted an O<sub>3</sub> maintenance SIP for the Tampa area on February 7, 1995, and also requested redesignation of the area to attainment with respect to the O<sub>3</sub> NAAQS.

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area must meet all relevant requirements under section 110 and part D of the CAA;

3. The area must have a fully approved SIP under section 110(k) of the CAA;

4. The air quality improvement must be permanent and enforceable; and

5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

The Florida redesignation request for the Tampa area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

#### 1. Attainment of the O<sub>3</sub> NAAQS

The Florida request is based on an analysis of quality assured O<sub>3</sub> air quality data which is relevant to the maintenance plan and to the redesignation request. The ambient O<sub>3</sub> data for the calendar years 1990 through